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Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-198

STATE OF LOUISIANA,

Petitioner,

versus

WILLIAM AUGUST MORA, JR.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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OPINIONS BELOW

The majority opinion of the Louisiana Supreme Court on remand as well as the dissenting opinions, are contained in the Appendix to this brief.

JURISDICTION

The judgment of the Louisiana Supreme Court in the instant case setting aside the conviction of William August Mora, Jr. for possession of marijuana was rendered on January 20, 1975. The application for rehearing on behalf of the State of Louisiana was denied on

February 21, 1975, as is shown by the minute entry of that date which appears in the Appendix to this petition. The State of Louisiana applied to the United States Supreme Court for a writ of certiorari. On October 16, 1975, the writ was granted and the judgment of the Louisiana Supreme Court vacated. The United States Supreme Court further ordered that the case be remanded to the Louisiana Supreme Court to consider the constitutional grounds upon which the state court decision was based. On March 29, 1976 the Louisiana Supreme Court handed down its decision. The State of Louisiana applied for a rehearing which was denied on May 14, 1976.

QUESTIONS

1. Whether or not the Louisiana Supreme Court based its judgment upon federal or state constitutional grounds or both?

2. Whether a public school teacher who searches property entrusted to him for safe keeping by a student and seizes incriminating evidence found therein, should be treated as a private person and hence not subject to Fourth Amendment restrictions?

3. Assuming that the Fourth Amendment applies to public school teachers as well as policemen, is a search by a public school teacher which is based upon less than probable cause yet more than mere unfounded suspicion "reasonable" under the Fourth Amendment?

STATEMENT OF THE CASE

The State of Louisiana charged the defendant, William August Mora, Jr., with possession of marijuana in violation of La. R.S. 40:966. Prior to trial the defendant filed a motion to suppress evidence, which was denied. The defendant was tried and convicted of possession of marijuana. He appealed the conviction to the Louisiana Supreme Court, which held that the motion to suppress evidence should have been maintained and reversed the conviction in a four to three decision. The State of Louisiana is seeking a writ of certiorari from this Honorable Court to review the judgment of the Louisiana Supreme Court which erroneously interpreted decisions of the United States Supreme Court, the application of the exclusionary rule, and the historical basis of the Fourth Amendment.

FACTS

Mr. Coy Scott, a teacher at Franklin High School in Franklin, Louisiana, was in charge of a physical education class on March 22, 1973. In this class, each student was required to change into gym clothes. In order to protect students from the theft of valuables while in class, each student was assigned a small canvas bag in which to place any valuables in his possession. This small bag was in turn placed in a larger bag which was locked in the office of the teacher.

On the day in question, this procedure was followed by the defendant in the presence of Mr. Scott. Mr. Scott became suspicious when the defendant turned his back to him while attempting to place an abnormally

oversized wallet in the small canvas bag. Mr. Scott also testified that at the time of the incident the defendant appeared highly nervous and that the defendant was friendly with a number of students who Mr. Scott knew to be connected with drug use. The defendant placed this canvas bag containing his wallet into a larger bag which Mr. Scott in turn locked in his office.

Due to his earlier suspicions, Mr. Scott later examined the defendant's wallet which was still inside the canvas bag. In the wallet he found a green vegetable like substance which he believed to be marijuana. Mr. Scott testified that he was somewhat familiar with the nature of marijuana because of drug education lectures which had been given in his school.

Mr. Scott called the principal of the school, who in turn called a school supervisor who was in charge of the drug education program for the St. Mary Parish school system. The supervisor testified that the substance found in the wallet resembled marijuana which he had seen in drug education programs. Identification which belonged to the defendant was found in the wallet. The defendant's father was called to the school, advised of what had happened and advised to see Captain Keenze, the juvenile officer of the St. Mary Parish Sheriff's Department, about the matter. The supervisor and the principal brought the wallet and the marijuana to the Sheriff's office and turned the matter over to Captain Keenze. Captain Keenze found that the defendant was seventeen years of age and hence an adult under the criminal law of Louisiana. The defendant was arrested for possession of marijuana and prosecuted as an adult.

The defendant filed a motion to suppress the marijuana which was denied. He was tried, convicted, and he appealed the conviction to the Louisiana Supreme Court which reversed his conviction and held that the motion to suppress should have been granted and the evidence suppressed. The State applied for a rehearing which was denied. The State applied for a writ of certiorari to the Supreme Court of the United States. On October 6, 1975 the Supreme Court of the United States vacated the judgment of the Supreme Court of Louisiana and remanded the case to the Supreme Court of Louisiana to:

> ". . . consider whether its judgment is based upon federal or state constitutional grounds or both. See *California* v. *Krivda*, 409 U.S. 33 (1975)."

The case was argued again before the Louisiana Supreme Court and a decision was rendered on March 29, 1976, holding that the original judgment was based upon both federal and state constitutional grounds. An application for a rehearing was denied on May 14, 1976.

ISSUE I

On remand the Louisiana Supreme Court decided in a four to three decision that while its original decision was based on both state and federal constitutional grounds,

> ". . . the suppression of the seized marijuana was mandated under the exclusionary

rule of *Mapp* v. *Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed. 2d 1081 (1961)."

The United States Supreme Court has recognized that where a state court has decided a case based on both federal and state constitutional grounds the two grounds may be so interwoven that the judgment can not be said to rest on an independent interpretation of state law. (See *State Tax Commission of Utah* v. *Van Cott*, 306 U.S. 511). Although the Louisiana Supreme Court found that its decision in *Mora* was based on both federal and state constitutional grounds the two grounds are so interwoven that the decision can not be said to rest on the state ground independently of the federal. As a result the federal constitutional ground for the decision is the overwhelming and controlling one.

The ultimate conclusion of the Court in *Mora* was to exclude the evidence seized by rendering it inadmissible at trial. In reaching this decision the Court cited a number of federal cases dealing with the implementation of the Fourth Amendment exclusionary rule. An historical analysis of the federal exclusionary rule shows that it developed from an interpretation of the Fourth Amendment. Historically the legislation and jurisprudence of Louisiana show that while Louisiana adopted the Fourth Amendment almost word for word in Article I Section 7 of the Constitution of 1921, there was an express rejection of any rule which would exclude evidence from a trial because of an unconstitutional search and seizure. Therefore, there is no basis for a strictly Louisiana exclusionary rule in the Louisiana Constitution of 1921 or in Louisiana jurisprudence. As a result, Louisiana has no exclu-

sionary rule independent of the Fourth Amendment and the federal exclusionary rule. Hence, while the Court in *Mora* may have decided that the school official violated both federal and state constitutions, it could only exclude the evidence as a matter of federal constitutional law which requires a violation of the Fourth Amendment of the United States Constitution. As a result the judgment of the Louisiana Supreme Court in *Mora* excluding the evidence has no adequate or independent basis upon which to stand other than the Fourth Amendment to the Constitution of the United States.

In support of this argument the State will examine the origins of the federal exclusionary rule, the application of the rule to the states, and the reaction of the State of Louisiana to the rule as reflected in its legislation and jurisprudence.

The exclusionary rule was applied to evidence seized by federal law enforcement officers for the first time in the case of *Weeks* v. *United States*, 232 U.S. 384 (1914). In this case this Court interpreted the exclusionary rule to be a rule of evidence which gave the Fourth Amendment a practical effect and thereby excluded the use of evidence seized in violation of the Amendment by federal law enforcement officials. Next, in *Wolf* v. *Colorado*, 338 U.S. 25 (1949) the court recognized that the Fourth Amendment applied to the conduct of the state law enforcement officials but refused to extend the exclusionary rule to enforce this right. Instead, the court held that:

"We cannot brush aside the experience of

States which deem the incidence of such conduct by the police too slight to call for a deterrent remedy not by way of disciplinary measures but by overriding the relevant rules of evidence. There are, moreover, reasons for excluding evidence unreasonably obtained by the federal police which are less compelling in the case of police under state or local authority. The public opinion of a community can far more effectively be exerted against oppressive conduct on the part of police directly responsible to the community itself than can local opinion, sporadically aroused, be brought to bear upon remote authority pervasively exerted throughout the country." (*Wolf* v. *Colorado*, 338 U.S. 25 (1949)).

In addition, Wolf was based to a large extent on the factual consideration that the states themselves were not in complete agreement concerning the adoption of the exclusionary rule on the state level. Some states had adopted a similar rule since *Weeks*. Others had not and relied on more traditional ways of curbing police abuse of the Fourth Amendment.

The first mention of an exclusionary rule in Louisiana under the Constitution of 1921 is found in the case of *State* v. *Fleckinger*, 93 So. 115, 152 La. 337 (1922). *Fleckinger* is the first case interpreting Article I Section 7 of the Louisiana Constitution of 1921. In *Fleckinger* the defendant was prosecuted for possession of lottery paraphernalia which the defendant argued had been illegally and unconstitutionally seized without his consent and without a warrant in violation of Article I Section 7 of the Louisiana Constitution and

Federal Constitution. The Court held that the Federal Constitution had no affect on the seizure. The Court further held, concerning Article I Section 7 of the Louisiana Constitution, that:

> "This section provides no penalty for its violation, nor does it declare that information obtained or property so seized shall not be used to support a prosecution against one who is thus found to have violated the law. In fact, the recent constitutional convention of 1921, declined to write such a prohibition in the present Constitution, notwithstanding the final report of the committee on the Bill of Rights (wherein this section if found) included it in the Article recommended as said Bill of Rights. See Journal of the Convention of 1921, pages 423 and 454.
>
> The ordinance, as introduced by Judge Reid, as chairman of the committee on Bill of Rights, contained, in addition to the language quoted above, as a part of Section 7, the following.
>
> . . . And no evidence obtained by unlawful search or seizure may be used against any person accused of crime." See Journal of the Convention, p. 423.
>
> But on motion of Mr. Snyder, of Madison, it was stricken out by vote of the convention. See Journal, p. 454.

> The Legislature may enact laws, if it sees fit, to carry this section into effect and to punish its violations, just as it might any other constitutional provision; but the courts are not justified in adding to the article language which the writers of the organic law refused to adopt." (*Fleckinger* p. 341)

The court went on to hold the evidence admissible even though seized without a warrant in violation of Article I Section 7 of the Louisiana Constitution.

In *State* v. *Eddins*, 108 So. 468, 161 La. 240 (1926) the Louisiana Supreme Court discussed in detail the arguments for and against a Louisiana exclusionary rule. *Eddins* involved a seizure of illegal whiskey from the defendant's residence without a search warrant. The Court stated that the issue presented in *Eddins* concerned whether:

> ". . . evidence of the commission of a crime is not admissible against a person accused of the crime, if the evidence was procured by an unlawful search and seizure by an officer of the law. The question is not new. We have decided several times that the fact that evidence of the commission of a crime or misdemeanor was obtained by an unlawful search and seizure by an officer of the law does not affect the question of admissibility or worth of the evidence against the person on trial for the crime or misdemeanor. City of *Shreveport* v. *Marx*, 86 So. 602, 148 La. 31; *State* v. *Fleckinger*, 93 So. 115, 152 La. 337; *State* v. *Zeblit*, 93 So. 912, 152 La. 594; *State* v. *Mims*, 95 So. 264, 153 La. 9;

> *State* v. *Lowry*, 95 So. 596, 153 La. 178; *State* v. *Davis*, 97 So. 590, 154 La. 405." (*Eddins* p. 242).

The Court noted that counsel for the defendant had cited *Weeks* v. *United States*, 232 U.S. 384 (1914) which had enforced an exclusionary rule against federal officers. In *Eddins* counsel for the defendant requested that the court reconsider its prior jurisprudence in light of *Weeks*. In response the Court noted that although other state courts had adopted an exclusionary rule since *Weeks:*

> "The Fourth and Fifth Amendments, of course, are not applicable to prosecutions in the state courts." (*Eddins*, p. 243)

The Court went on to cite the Fourth Amendment and the corresponding section of the Louisiana Constitution (Article I Section 7) and recognized the evil inherent in police conduct which violates these basic laws. However, the Court held that it would:

> ". . . adhere to the opinion which we have expressed in former decisions that, however wrong and illegal it may be for an officer of the law to invade and search a private dwelling without a warrant, his offense does not affect the question of admissibility or worth of evidence discovered in that way. The provisions of the Constitution and the statute forbidding a search of a private dwelling without a warrant do not constitute a rule regarding the admissibility of evidence. An unsuccessful attempt was made in the Con-

stitutional convention of 1921 to make Section 7 of Article I a rule of evidence. As reported by the committee on the Bill of Rights, Section 7 contained this provision, which, on motion of one of the delegates (who was a district attorney), and by vote of the convention itself, was stricken out, viz:

> And no evidence obtained by unlawful search or seizure may be used against any person accused of crime.

See Journal of the Convention, pp. 423 and 454." (*Eddins*, pp. 244-245)

Although the Court agreed that the unconstitutional search of a residence by an officer of the state was wrong it did not:

> ". . . agree that the only or proper way to rebuke or punish the officer in such a case is to let the victim of his wrongdoing, caught violating another law, enacted pursuant to another Amendment of the Constitution, go free." (*Eddins*, p. 246)

Instead, the Court reaffirmed the earlier jurisprudence and held the evidence admissible and specified other ways to curb police conduct. These early Louisiana decisions clearly show that the State of Louisiana had legislatively and judicially rejected attempts to adopt an exclusionary rule similar to that of *Weeks*.

During this period the federal courts expanded the scope of the federal exclusionary rule. In the case of *Rea* v. *United States*, 350 U.S. 214 (1956) the Court held that the main thrust of the exclusionary rule is the control of federal law enforcement officers and that the rule was based upon the Federal Rules of Criminal Procedure. In *Elkins* v. *United States*, 364 U.S. 206 (1960) the court cut down what had been an exception to the exclusionary rule, namely that evidence seized by state police could be given to the federal police on a "silver platter" for use against the defendant in federal court and thereby survive constitutional attack. In *Elkins* the court held it would apply the exclusionary rule to any evidence sought to be introduced in a federal court regardless of whether it was seized by state or federal law enforcement officials.

The expansion of the exclusionary rule in *Elkins* was followed by the court in *Mapp* v. *Ohio*, 367 U.S. 643 (1961). In *Mapp* the United States Supreme Court overruled *Wolf* and held that the exclusionary rule was binding upon the states as well as the federal government. In *Mapp* the court specified police misconduct as the evil to be controlled by the exclusion of evidence seized in violation of the Fourth Amendment. According to the Court in *Mapp* the exclusionary rule was not just a rule of evidence but an "essential part" of the Fourth Amendment and applied to the States through the Fourteenth Amendment.

The Louisiana Supreme Court implemented the federal exclusionary rule in a number of decisions following *Mapp*. In *State* v. *Aias*, 149 So. 2d 400, the Court stated that:

> "In *Mapp* v. *Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (decided June 19, 1961) the United States Supreme Court held that the "Exclusionary Rule" of the Weeks case, supra, is an essential part of both the Fourth and Fourteenth Amendments to the United States Constitution. It held that the Fourth Amendment's right of privacy was enforceable against the States through the "Due Process Clause" of the Fourteenth Amendment, stating that it was enforceable against the States by the same sanction of exclusion as is used against the Federal Government." (*Aias*, p. 406)

In the case of *State* v. *James*, 169 So.2d 89 (1964) then Justice Sanders, now Chief Justice, concisely summarized in a dissent to the refusal to grant a rehearing the effect of *Mapp* on the search and seizure law of Louisiana in the following language:

> "The Mapp decision did not reduce the search authority of state law enforcement officers. Such searches as the one in the present case were violative of constitutional rights before Mapp. The decision did add a sanction: It made the evidence from unconstitutional searches inadmissible in state criminal proceedings. At the time of the decision, over half the states had already adopted the exclusionary rule. While this Court had rejected the exclusionary rule, it at one time had been divided on the question." (*James*, p. 119)

It is clear from the above cited cases that Louisiana had no exclusionary rule prior to *Mapp* and the Louisiana courts only began excluding evidence with the advent of *Mapp*. Since *Mapp* no Louisiana case has specifically held that Louisiana in response to *Mapp* adopted its own exclusionary rule independent of *Mapp*.

It can be argued that although the Louisiana Supreme Court did not specifically adopt an exclusionary rule independent of *Mapp* that the enactment by the Louisiana legislature of Article 703 of the Louisiana Criminal Code of Procedure resulted in the establishment of a separate exclusionary rule in Louisiana. However, an examination of the history of the procedural implementation of *Mapp* shows that Article 703 was strictly a legislative reaction to *Mapp* and merely provided a procedural vehicle whereby the requirements of *Mapp* could be followed in a procedurally proper and orderly manner. It therefore does not represent the enactment of a substantive Louisiana exclusionary rule by the legislature.

In *State* v. *Davidson*, 177 So.2d 273 (1965) the Louisiana Supreme Court expressly looked to the Federal Rules of Criminal Procedure for the proper procedural vehicle to raise the question of an unconstitutional search and seizure and stated that:

> "Since an objection to evidence on the ground that property had been unlawfully seized was unavailing under our jurisprudence, no provision was made in our Code of Criminal Procedure in 1928 for the necessity of a motion to suppress evidence or to quash a search

warrant in cases involving alleged illegality as a result of an unreasonable search and seizure.

However, the ruling in *Mapp* v. *Ohio,* supra, that the rights secured by the Fourth Amendment to the Federal Constitution are enforceable against the states through the due process clause of the Fourteenth Amendment, has constrained the State courts to exclude evidence in criminal cases which has been obtained by an unlawful search and seizure and, therefore, the question remains as to the procedural vehicle to be employed by the accused in assailing the legality of the seizure in a State like this where there is no statute or prior jurisprudence defining the proper method by which the issue is to be presented. In any event, we believe that, since the exclusionary rule must be applied in all state criminal cases in accordance with the edict in *Mapp* v. *Ohio,* the procedural rights of the accused should also conform with the standard provided by the Federal Courts and that he should not be accorded by the trial courts in or of this State any less onerous procedure than he would have had if he had been tried before a Federal Court. See *State* v. *Rasheed* and *Thomas,* 248 La. ____, 178 So.2d 261, this day handed down. In other words, coexistent with the implementation of the exclusionary rule, it is our policy to adopt and enforce the procedural rule of the court from which the exclusionary rule has emanated." (*Davidson,* pp. 274-275)

The State also directs the attention of the Court to the acknowledged source of Article 703 as cited in the Official Revision Comment to that article found in the Louisiana Code of Criminal Procedure which states:

> "(a) This article is a modification of the source material insofar as suppression of the use of property as evidence is concerned. Federal Rule 41(e) provides that the motion may be filed in a court having jurisdiction over the place where the seizure took place or in the trial court. Although this may be necessary where the federal government is involved, it is not necessary on the state level. For example, if there has been a seizure in Baton Rouge and the trial is in New Orleans, it is not necessary to permit a motion to suppress in a Baton Rouge court.
>
> (b) In lieu of enumerating the situations to which the motion applies, as does Federal Rule 41(e), Paragraph A of this article applies generally to evidence obtained as a result of an unconstitutional search or seizure. This conforms with the standard set in *Mapp* v. *Ohio,* 367 U.S. 643, 81 S.Ct. (1684), 6 L.Ed.2d 1081 (1961), which applied Fourteenth Amendment "due process" concepts to state searches and seizures. The term "unconstitutional," rather than the term "illegal" is employed on the theory that a search or seziure can be "illegal" if some minor aspect of search or seizure, or of the search warrant or arrest involved, was technically contrary to law even if not violative of Fourteenth Amendment "due

process" concepts as expressed by the Mapp case. Use of the more limited term "unconstitutional," also conforms with the Louisiana Supreme Court's interpretation of the Mapp requirements in *State* v. *James*, 246 La. 1033, 169 So. 2d 89 (1964). *State* v. *James* was reversed on other grounds by the United States Supreme Court, 382 U.S. 36, 86 S.Ct. 151, 15 L.Ed. 2d 30 (1965).

(c) The provision in the federal rule to the effect that the judge can hear all evidence necessary to decide the motion is omitted from this article because it is unnecessary.

(d) Paragraph A of this article, similar to Federal Rule 41(e), limits the time for filing the motion to suppress authorized by that paragraph. As interpreted by the federal courts, if the motion is not timely filed, the taint of unlawfulness is waived and the attack may not be made later during the trial by an objection to admissibility. *United States* v. *Milonvich*, 303 F.2d 626 (4th Cir. 1962), cert. denied, 371 U.S. 876, 83 S.Ct. 145, 9 L.Ed. 2d 115 (1962); *Browning* v. *Crouse*, 327 F.2d 529 (10th Cir. 1964). Accord: *State* v. *Davidson*, 248 La. 161, 177 So.2d 273 (1965)."

In summary, the logic of the State's argument on this point may be outlined in the following manner.

FIRST: The Louisiana Supreme Court decided that the school official violated both the Fourth Amend-

ment and Article I Section 7 of the Louisiana Constitution and excluded or suppressed the evidence which was unconstitutionally seized.

SECOND: An analysis of the adoption of Article I Section 7 of the Louisiana Constitution of 1921, the jurisprudence of Louisiana dealing with an exclusionary rule prior to *Mapp*, the nature of the federal exclusionary rule as set out in *Mapp*, and the legislative and judicial reaction to *Mapp* shows that under Article I Section 7 of the Constitution of 1921 Louisiana has no exclusionary rule independent of *Mapp*.

THIRD: Since Louisiana has no state exclusionary rule, the constitutional grounds for the exclusion of the evidence was the federal exclusionary rule which according to *Mapp* is an essential part of the Fourth Amendment and therefore has constitutional status.

FOURTH: Although the decision of the Louisiana Supreme Court recites that it was based in part on state constitutional grounds it does not have an adequate independent basis in state law because without the federal grounds the Court could not have excluded the evidence.

ISSUE II

At the heart of both decisions of the Louisiana Supreme Court is the reasoning that under the Fourth Amendment a public school teacher must be held to the same strict rules as is a policeman. As a result, when evidence is seized by a public school teacher and

the state seeks to introduce that evidence against the student in a criminal proceeding the search and seizure must conform to the warrant requirements of the Fourth Amendment or fall within one of its exceptions.

The State of Louisiana concedes that in light of the case of *Tinker* v. *Des Moines*, 89 S.Ct. 733 (1969) public school students are protected by the Fourth Amendment in as well as out of school. However, the State of Louisiana is of the belief that the Louisiana Supreme Court committed error when it held that a public school teacher is a "government agent" similar in function to a policeman and hence subject to the strict requirements of the Fourth Amendment. In reaching this result the Louisiana Supreme Court reasoned that in the same manner that the policeman has the responsibility and duty to enforce the laws of the state, the public school teacher has the responsibility and duty to enforce the regulations of a school system. In addition, the regulations of a school system, like the laws of society are both designed to protect the many from the irrational acts of the few and that therefore the function of the policeman and the teacher are similar. At first blush, it would seem that for Fourth Amendment purposes the public school teacher should be held to the same test of "reasonableness" as the police officer, that of "probable cause." The logic of this argument, however, is blunted by an analysis of the relationship which exists between a police officer and citizens as compared with a public school teacher and students.

The main function of the policeman in society is that of law enforcement. He represents the state's power to

control the lives of its citizens. The public school teacher on the other hand, functions within society and the school as a teacher. This is his main function. Only secondarily does he enforce the regulations and rules of the school. The school official is not trained in the complex issues of constitutional and criminal law as is the police officer. The objective of the school official is to instruct and educate, not to arrest and amass evidence of crime.

It is this line of reasoning which forms the heart and core of the exclusionary rule and the corresponding distinction between police conduct and the conduct of private citizens. Historically the Fourth Amendment originated as a control on the power of the state. *Federalist No. 84: Boyd* v. *U.S.*, 116 U.S. 616 (1886); *Burdeau* v. *McDowell*, 256 U.S. 465 (1921) and *Coolidge* v. *New Hampshire*, 403 U.S. 443 (1971) and the jurisprudence of this Honorable Court shows an attempt to deter police misconduct through the exclusionary rule by keeping evidence seized in violation of the Fourth Amendment out of court and thereby deterring law enforcement authorities from violating the Fourth Amendment. *Mapp* v. *Ohio*, 367 U.S. 643 (1961); *Terry* v. *Ohio*, 392 U.S. 1 (1968); *Coolidge* v. *New Hampshire*, 403 U.S. 443, (1971). In *United States* v. *Calandra*, 414 U.S. 338 (1974) the Court considered the use of illegally seized evidence in a grand jury proceeding. The United States Supreme Court held that the exclusionary rule was only a "remedial device," (*Calandra*, at p. 348) and hence not applicable to a grand jury proceeding. The court went further to specifically hold that:

> "The rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect rather than a personal constitutional right of the party aggrieved." (*Calandra*, at p. 348)

This case specifically discarded the personal right theory and the judicial integrity theory and held that the sole basis for the exclusionary rule is its deterrent effect on police misconduct.

Knowledge is essential to deterrence. In order to be deterred from doing an act a person must have knowledge of the adverse consequences of his act. A large part of the knowledge a person possesses is directly related to his basic function in society. A policeman's basic function is to enforce the law. Hence, part of his knowledge consists of the Fourth Amendment and the exclusionary rule. With this knowledge (that any evidence he seizes in violation of the Fourth Amendment will be excluded from court) he is deterred from violating this rule.

In *Mapp* the court held that when the police violate the Fourth Amendment while seizing evidence, that evidence is not admissible to convict the defendant. Under *Calandra* the basis for the exclusionary rule is police deterrence. Although a teacher is an employee of the state, he is not a policeman. While he has some functions similar to that of a policeman, such as enforcement of school regulations, his main function is instruction, not law enforcement. Therefore, the rational basis for the existence and application of the exclusionary rule to the actions of the police is absent

when the rule is applied to the actions of a teacher. Evidence seized in violation of the Fourth Amendment by a policeman, if admissible in court, would promote the functions of the policeman to legally control crime. Evidence seized in violation of the Fourth Amendment by a teacher, if admissible in court, would not promote the function of a teacher to educate and instruct. Hence, the deterrence effect of the exclusionary rule will have no force or effect on the teacher.

Applying the foregoing analysis to the facts of this case, the following conclusions may be drawn. Although technically an employee of the state, the teacher who found the evidence was not employed in a law enforcement capacity. He had no law enforcement duties to carry out. The Fourth Amendment as enforced by the exclusionary rule applies only to state action by a state official acting in a law enforcement function. Since the teacher acted as a private citizen in seizing the marijuana in this case, he had no knowledge of the exclusionary rule or the Fourth Amendment, and the application of these complex rules of constitutional law to his conduct would not prevent or deter his future action. There was no evidence of any prior cooperation between the teacher and the police which would thereby make his actions subject to the Fourth Amendment.

ISSUE III

Assuming that this Honorable Court agrees with the Louisiana Supreme Court that a public school teacher should be treated as a law enforcement official for purposes of the Fourth Amendment, certiorari should be

granted to determine the important and related issue of whether the search of the defendant in this case on less than probable cause but more than mere unfounded suspicion was "reasonable" under the Fourth Amendment. The State submits that a search by a teacher requires less than probable cause for its justification.

The essence of this argument is that due to the inherently different functions of a police officer and a public school teacher a lesser degree of "reasonable" should be required of a public school teacher for his actions to qualify under the Fourth Amendment as reasonable than that which is required of the police officer.

The logic of this argument is not new. In the area of stop and frisk, it is the great probability of physical danger to the police officer which allows him to search a person for weapons even though he does not have a search warrant or fall within one of the exceptions to a search warrant. Hence, in the case of a school official it is his lack of knowledge of constitutional and criminal law which allows him to justify his search on less than probable cause. This argument does not allow indiscriminate searching of students by school officials but requires that the school official point to specific facts which justify his reasonable suspicion. The school official is not required to follow complex criminal procedure of which he has no knowledge, but the student's Fourth Amendment rights are given sufficient protection.

If the court decides to treat school officials as policemen for the purposes of the Fourth Amendment,

it should adopt the reasoning of *Tinker* v. *Des Moines*, 89 S.Ct. 733 (1969) and *Wood* v. *Strictland*, 420 U.S. 308 (1975) and formulate a less strict test than that used for policemen in deciding whether or not a search by a school official is reasonable. In both *Tinker* and *Strictland* the United States Supreme Court held that while students are protected by the constitutional rights of free speech and due process in as well as out of school, a different standard for evaluating the extent of these rights would be used when they are exercised on the school ground. Therefore, even if this Court decides that students are to be protected by the Fourth Amendment from "unreasonable" searches and seizures by teachers then, this Court should grant writs of certiorari to decide the important question of whether the test for what is "reasonable" should be different than that applied to police officers.

Applying these considerations to the facts of this case, the search by the teacher of the property of the defendant was reasonable under the Fourth Amendment for the following reasons:

1. The defendant acted in such a manner so as to arouse the reasonable suspicion of the teacher. The teacher testified that he saw the defendant turn his back to him and stuff something into his wallet. This action caused the wallet to become excessively large and bulky.

2. The teacher had knowledge of the defendant's association with persons he knew or suspected to be drug users.

3. The teacher testified that the defendant appeared excessively nervous and excited when he put the wallet inside the canvas bag.

4. The teacher had some basic knowledge of drugs and drug use due to drug orientation lectures given by the school board.

While the above mentioned facts would not amount to probable cause under the Fourth Amendment if the teacher were a police officer, they do add up to what can be called reasonable suspicion upon which a school teacher not trained in constitutional law could justify a search.

REASONS FOR GRANTING THE WRIT

The State of Louisiana is of the respectful belief that this case confronts the court with an important fundamental issue concerning the nature of the relationship between students and public school teachers and its result will ultimately affect the quality of public education throughout the State of Louisiana and the nation.

This decision by the Supreme Court of Louisiana is based entirely upon the erroneous interpretation by a state court of federal constitutional standards as reflected by the prior decisions of the United States Supreme Court.

The Supreme Court of Louisiana certified on remand that the evidence was excluded as a result of the

federal exclusionary rule of *Mapp* which has constitutional statute.

This decision of the Louisiana Supreme Court places a heavy burden on public school teachers throughout the State of Louisiana who are already burdened with increasing discipline problems.

This decision of the Louisiana Supreme court is out of line with the vast majority of both federal and state decisions on this issue. (See 49 ALR 3d 978 at 985; *In Re Donaldson,* 269 Cal. App.2d 509, 75 Cal. Rep. 220; *People* v. *Stewart,* 63 Misc. 2d 601, 313 N.Y.S. 2d 253; *State* v. *Stein,* 203 Kan. 638, 456 Pac. 2d 128; *Overton* v. *Riegen,* 311 Supp. 1035; *People* v. *Jackson,* 319 N.Y.S. 2d 731, affirmed 30 N.Y.2d 734, 33 N.Y.S.2d 168; 284 N.E. 2d 152; *In Re State In The Interest of G.C.,* 121 N.J. Super. 108, 296 A. 2d 102; *State* v. *Baccino,* 282 A. 2d 689; 49 ALR 3d 973; 79 C.J.S. Schools and School Districts, ¶ 493)

This decision of the Louisiana Supreme Court is in direct conflict with the logic of two major recent United States Supreme Court decisions (*Tinker* v. *Des Moines,* 89 S.Ct. 733 (1969); *Wood* v. *Strictland,* 420 U.S. 308 (1975) dealing with the public schools of the nation which hold that although students do not shed their constitutional rights at the school yard gate, the test to be used to determining the extent to which these constitutional rights are to be exercised in school is of necessity and reason different from the test used outside the school.

This decision of the Louisiana Supreme Court automatically incorporated the entire law of search and seizure previously only applicable outside the school system into the school system without proper consideration of the possible adverse effects such a decision will have within the school system as to the ability to maintain discipline and a good educational environment.

This decision of the Louisiana State Supreme Court was decided on Fourth Amendment grounds and therefore under the recent United States Supreme Court decision of *State of Oregon* v. *Hass*, 420 U.S. 714 (1975), this case presents a substantial federal question for review.

This decision of the Louisiana Supreme Court presents a substantial federal question which has not yet been considered by the United States Supreme Court. This Court has rendered decisions concerning the extent to which the first amendment free speech standard applies to the public school system (See *Tinker* v. *Des Moines*, 89 S.Ct. 733, 1969) as well as the due process standard of the Fourteenth Amendment. (See *Wood* v. *Strictland*, 420 U.S. 308 (1975) In addition the Louisiana Supreme Court has decided this case on a rationale contrary to that accepted by the United States Supreme Court in the cases mentioned above.

CONCLUSION

The State of Louisiana respectfully prays that a writ of certiorari issue herein directed to the Supreme Court of Louisiana, and further prays that the judgment of the Louisiana Supreme Court erroneously interpreting the applicability of the Fourth Amendment and the federal exclusionary rule to the actions of a public school teacher be reversed.

RESPECTFULLY SUBMITTED,

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CERTIFICATE

I certify that a copy of this Petition for Certiorari has been mailed to:

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No. 54,884

SUPREME COURT
OF THE STATE OF LOUISIANA

STATE OF LOUISIANA

VS.

WILLIAM AUGUST MORA, JR.

OPINION AND JUDGMENT

BARHAM, J.

Entered and Filed Jan. 20, 1975

/s/ HAROLD A. MOISE, JR.
Clerk.

REHEARING REFUSED
Feb. 21, 1975

SUPREME COURT OF LOUISIANA
A TRUE COPY
JULY 28, 1976
/s/ ANDREW J. FALCON
Deputy Clerk

(SEAL)

SUPREME COURT OF LOUISIANA

NO. 54,884

STATE OF LOUISIANA

VERSUS

WILLIAM AUGUST MORA, JR.

ON WRIT OF CERTIORARI TO THE SIXTEENTH JUDICIAL DISTRICT COURT, PARISH OF ST. MARY, HONORABLE ROBERT M. FLEMING, JUDGE.

BARHAM, Justice.

Relator was convicted of possession of marijuana, a violation of La. R.S. 40:966C, and was sentenced to six months' imprisonment in the parish jail. We granted certiorari upon relator's application to review the trial court's denial of a motion to suppress the marijuana which formed the basis of the prosecution and a motion to suppress a confession. We find merit in relator's arguments alleging error in the trial court's ruling on his motion to suppress the marijuana and we therefore pretermit consideration of relator's other complaint.

At the time that the marijuana was seized, relator was a seventeen-year-old high school senior who was participating in a physical education class at the school he attended. Each participant changed from street clothes to gym clothes before joining in the class activities and, in accordance with a customary

practice, placed his wallet and other valuables in an individual small canvas bag provided for that purpose. Once the small valuables bags were filled, they were all placed in a large duffel bag which was locked for safekeeping in the instructor's office for the duration of the class.

On the day of the search and seizure, relator obtained his small valuables bag from the instructor. The instructor testified at the hearing on the motion to suppress that the relator turned his back while filling the canvas bag, that his actions were furtive, and that he experienced some difficulty in placing his wallet, which appeared to be bulky, into the small canvas bag. Once the small valuables bag had been placed in the duffel bag, the instructor locked the duffel bag in his office. The instructor further testified that after reflecting on relator's furtive actions and considering them in light of his knowledge that some of relator's companions were narcotics users and that there was talk of the use of drugs by different student groups, he decided to inspect the contents of relator's wallet. When he opened the wallet, he found a plastic bag which contained a leafy green substance. Believing the substance to be marijuana, he summoned the school principal. The principal concurred in the instructor's belief and notified the juvenile authorities, to whom the marijuana was ultimately released. Relator's prosecution ensued and the motion to suppress the marijuana was heard and denied.

The Fourth Amendment to the United States Constitution and Article I, §7 of the Louisiana Constitution of 1921 (in effect at the time of the search in question) safeguard persons from unreasonable searches con-

ducted without a warrant. However, the applicability of these constitutional prohibitions against unreasonable searches and the exclusionary rule of Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961) is limited to cases where the seizure is effected by governmental agencies. Concomitantly, the fruits of searches and seizures conducted by private persons are not subject to exclusion. *See e.g.*, Barnes v. United States, 373 F.2d 517 (5th Cir. 1967). *See also* Burdeau v. McDowell, 256 U.S. 465, 41 S.Ct. 574, 65 L.Ed. 1048 (1921). Therefore, before we can decide the constitutionality of the search itself, we must initially determine whether the instructor and the school principal who effected the search and seizure were functioning as private persons, exempt from the stricture of the constitutional provisions, or as governmental agents, subject to those provisions.

Principals and instructors, like others employed by the State through its school boards, are responsible for public education in this State and are charged with the responsibility of implementing the policies of the State in this respect. By state law a teacher is authorized to hold each pupil strictly accountable for disorderly conduct at school. A principal may suspend from school any pupil who is guilty of willful disobedience or who uses tobacco or alcoholic beverages in any form in school buildings or on school grounds or who commits any other serious offense. La. R.S. 17:416. Because of the function of these school officials and their strict accountability to the State, we must conclude that these school officials, insofar as they are discharging their duties by enforcing State policies and regulations, are within the purview of the Fourth Amendment's prohibition; therefore, their students

must be accorded their constitutional right to be free from warrantless searches and seizures.

We must now consider whether the search and seizure effected by these State officials violated the constitutional stricture against unreasonable searches and seizures and whether suppression of the seized marijuana was consequently mandated under *Mapp*.

The general rule is that a search conducted without a warrant is per se unconstitutional. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) * * *" State v. Tant, 287 So. 2d 458, 459 (La. 1973). However, it is possible for a search without a warrant to be constitutional, if and only if it falls within one of those categories recognized as "specifically established and well-delineated exceptions" to the warrant requirement. See Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971), citing Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). Two examples of such exceptions are searches incident to a lawful arrest and certain automobile searches.

We hold that a search on school grounds of a student's personal effects by a school official who suspects the presence or possession of some unlawful substance is not a "specifically established and well-delineated" exception to the warrant requirement and that the fruits of such a search may not be used by the State prosecutorial agency as the basis for criminal proceedings.

For the reasons assigned, the relator's motion to suppress is maintained and his conviction and sentence are reversed.

SANDERS, C. J., dissents for the reasons assigned by Mr. Justice Summers.

SUMMERS, J., dissents and will assign reasons.

MARCUS, J. dissents for reasons assigned by Mr. Justice Summers.

SUPREME COURT OF LOUISIANA

NO. 54,884

STATE OF LOUISIANA

VS.

WILLIAM AUGUST MORA, JR.

Filed Jan. 21, 1975

SUMMERS, Justice (dissenting).

I cannot agree with the majority. I would decide this case as follows:

Certiorari was granted to review the trial judge's ruling denying a motion to suppress marijuana on the ground that it had been obtained as a result of an unlawful search and seizure and to review his ruling denying a motion to suppress a confession on the ground that it was not made freely and voluntarily.

Defendant was charged by bill of information with possession of marijuana. La. R.S. 40:966C. Prior to trial, defense counsel filed motions to suppress marijuana confiscated by the State on the ground that it had been obtained by an unlawful search and seizure. He also filed a motion to suppress defendant's confession, alleging that it was not free and voluntary. Hearings were held and both motions were denied. After trial by the court without a jury, defendant was found guilty on December 12, 1973 and sentenced to serve six months in the parish jail. On defendant's application, writs were granted to review the ruling denying the motions to suppress the marijuana and the confession.

I.

The Search and Seizure

Defendant was a high school student on March 22, 1973 when this offense occurred. At the time he was seventeen years old. Coy Scott, the physical education instructor, a member of the high school faculty, was conducting an early morning class in physical education in which defendant was enrolled. In accordance with a practice customarily followed, before each class, as they were "dressing out", students wishing to do so placed their wallets, watches and other small, valuable personal effects in small individual canvas "valuables or P.E. bags" furnished by the school. The

bags were then turned over to the instructor in charge of the class who, in turn, placed them in a large duffle bag. This bag was then locked in the instructor's office for safekeeping while the class was in progress. Experience had taught that this practice reduced pilfering.

On the day in question, defendant obtained his canvas valuables bag from Scott's desk and furtively turned his back while inserting his wallet. Scott observed defendant's furtive actions and the fact that his wallet was bulky, causing defendant to experience some difficulty in his nervous effort to put the overstuffed wallet into the bag. When defendant turned his valuables bag in, Scott placed it in the larger duffle bag and locked it in his office. Later, while the class was in session, Scott reflected upon this incident and the fact that "during this time, there had been several of the kids speaking of the different groups using drugs", and further, because, he said, "During this time, we had had several cases of drugs being used; and, of course, we had completed a drug seminar, and we had been cautioned many times to keep our eyes open for anything that may be suspicious going on at school . . . ." In addition, he had been informed that some of defendant's friends, or students he ran with, were narcotic users.

Persuaded by these circumstances and his concern over the presence of dangerous drugs on the school premises, Scott returned to his office to inspect defendant's valuables bag. When he opened the wallet, he found a plastic bag containing a leafy green substance. Believing that it was marijuana, he put the wallet back and reported his discovery to Dan Brum-

field, the school principal. Donovan Pontiff, the supervisor of instruction, was called into the case by the principal and together, in the coach's office, the three examined the wallet which was found to contain defendant's driver's license and the green substance. Pontiff, also the school's drug coordinator, recognized the green substance in the wallet as marijuana.

Defendant's father was summoned to school. When he arrived it was recommended that he take his son to the juvenile officer attached to the sheriff's office. The principal then delivered the plastic bag containing one-half lid of marijuana and one cigarette to the juvenile officer. Meanwhile defendant and his father drove in the father's car to the sheriff's office in compliance with the advice of the school principal.

The Fourth Amendment to the United States Constitution, Article I, Section 7, of the Louisiana Constitution and the exclusionary rule of Mapp v. Ohio, 367 U.S. 643 (1961) have long been viewed "as a restraint upon the activities of sovereign authority and . . . not . . . a limitation upon other than governmental agencies." Burdeau v. McDowell, 256 U.S. 465 (1921). In short, these are limitations upon the exercise of State authority and they are inapplicable to private persons.

The rationale for the rule which allows unlawfully seized evidence by private individuals to be admitted, aside from the fact that it is not unconstitutional, is the notion that private individuals would not be deterred by an exclusionary rule. Ann. 36 ALR 2d 553, 559. Thus the exclusionary rule only applies to this search by the coach and school principal if their actions be con-

sidered the actions of state officials. State v. Kemp, 251 La. 592, 205 So. 2d 411 (1968); State v. Evans, 249 La. 861, 192 So. 2d 103 (1966).

It is axiomatic that the protection of the Fourth Amendment is not restricted to dwellings. Go-Bart Importing Co. v. United States, 282 U.S. 344 (1930). A depository such as a locker or even a desk is safeguarded from unreasonable searches for evidence of a crime. United States v. Blok, 88 U.S. App. D.C. 326, 188 F. 2d 1019 (1951). Under this rule defendant's valuables bag is protected from unreasonable search and seizure.

Equally well recognized is the principle that "Students in schools as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State." Tinker v. Des Moines Community School Dist., 399 U.S. 503 (1969). This principle denies that a student sheds the cloak of constitutional protection at the schoolhouse door. To the contrary, "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." Shelton v. Tucker, 364 U.S. 479 (1960). It is essential that the youth of this nation learn that the magnificence of our Constitution is founded upon genuine rights and not mere platitudes. The Bill of Rights applies to juveniles. In re Gault, 387 U.S. 1 (1967).

Decisions of this Court are not rendered in a vacuum. I believe it to be widely accepted that school authorities are impressed with the obligation to main-

tain discipline over the students committed to their charge. Common experience requires a recognition that when large numbers of teenagers are gathered together in such an environment, their inexperience and lack of mature judgment will often create hazards to those in the group. Parents who surrender their children to schools in order that they may continue to develop intellectually and socially have a right to expect certain safeguards. The school environment presents "special characteristics" which must determine the light in which constitutional principles are applied. Tinker v. Des Moines, 393 U.S. 503 (1969).

It is particularly during the high school years of their children when parents are justifiably concerned that they not be unduly subjected to antisocial behavior, especially the illegal use of dangerous drugs. The inquisitive nature, daring, and susceptibility to suggestion of high school students increases the danger in this sensitive area. These conditions require that school authorities investigate any charge or reasonable suspicion that a student is using or possessing narcotics. Appropriate steps must be taken if the evidence substantiates the charge or suspicion. Unattended by vigilant school authorities imposing proper discipline and restraint, the use of drugs could proliferate like wildfire. People v. Overton, 20 N.Y. 2d 360, 229 N. E. 2d 596 (1967); reargued and affirmed 24 N.Y. 2d 522, 249 N.E. 2d 366 (1969).

It is necessary to first decide whether the school coach who made the search and the principal who made the seizure are officials whose actions are governed by the Fourth Amendment of the United States Constitution and Article I, Section 7, of the Louisiana

Constitution. The Fourth Amendment, as made obligatory on the States by the Fourteenth Amendment, protects the citizen against the State itself and all of its creatures — school boards and school officials not excepted. West Virginia v. Barnett, 319 U.S. 624 (1943).

The State and the school boards, its creatures, govern and conduct public schools. Principals, coaches and teachers are charged with carrying out the policies of the State in this respect. Every parent, tutor or other person residing within the State of Louisiana having control or charge of any child between the ages of seven and fifteen is compelled by State law to send the child to school and assure his attendance under penalty of fine or imprisonment, or both. La. R.S. 17:221. By State law every teacher is authorized to hold every pupil to a strict accountability for disorderly conduct at school. School principals may suspend from school any pupil who, among other things, is guilty of willful disobedience or who uses tobacco or alcoholic beverages in any form in school buildings or school grounds; or who commits any other serious offense. La. R.S. 17:416. And the state board of education is required to prescribe a course of study on the evils and injurious effect on the human system of the use of alcohol and narcotics. La. R.S. 17:262-265. It is necessary to conclude, therefore, that school authorities, principals, teachers and coaches, while enforcing State policy and regulations come within the contemplation of Fourth Amendment guarantees, and that they must respect the rights of students against unreasonable searches and seizure. The identical standard is established by Article I, Section 7, of the Louisiana Constitution. In re the Interest of G.C., 121 N.J. Super. 108, 296 A 2d 102 (1972).

This does not mean, however, that the entire law of search and seizure as it applies in criminal law is automatically incorporated into the school system of this State. The Fourth Amendment's proscription that the citizen not be subjected to unreasonable searches and seizures, does not require that a reasonable search be invalidated.

It is apparent from the language of the Fourth Amendment that a valid search warrant may only be issued upon an affidavit or complaint which sets forth facts establishing probable cause. There are instances, however, in which the police are permitted to make arrests and searches without first obtaining a warrant. In such instances it is the Fourth Amendment protection against "unreasonable searches and seizures" which is directly applicable. But, because a "principal incentive" for the procurement of warrants would be destroyed if police needed less evidence when acting without a warrant, the requirements in such instances "surely cannot be less stringent" than when a warrant is obtained. Won Sun v. United States, 371 U.S. 471 (1963). It is correct to say, therefore, that probable cause is also required for warrantless arrests and searches, and the standard of reasonableness or probable cause for a search and seizure is the same for an arrest.

At the same time certain kinds of searches and seizures, because they involve a lesser degree of intrusion or interference, are permitted upon less than the traditional amount of probable cause. Camara v. Municipal Court, 387 U.S. 523 (1967) building inspections by city housing inspectors; Terry v. Ohio, 392 U.S. 1 (1968) stop and frisk; Davis v. Mississippi, 394

U.S. 721 (1969) detention for fingerprinting; Henderson v. United States, 390 F. 2d 805 (9th Cir. 1967) border search — even mere suspicion not required to search bags and vehicles; Kamisar, et aux, *Modern Criminal Procedure* p. 228 West Pub. Co. (1974).

Against this background stands the doctrine of in loco parentis recognized by Article 220 of the Civil Code:

> "Fathers and Mothers may, during their life, delegate a part of their authority to teachers, schoolmasters and others to whom they entrust their children for their education, such as the power of restraint and correction, so far as may be necessary to answer the purposes for which they employ them.
>
> "They have also the right to bind their children as apprentices."

In all schools of Louisiana it is accepted custom that the mere act of the parent in sending his child to school is implied authority to the teacher to correct the child so far as may be necessary to answer the purposes for which the teacher was employed. Op. Atty. Gen. 1934-36, p. 221.

Not only in Louisiana but generally throughout the Nation, a school teacher stands in the place of a parent to his students. He may exercise such authority and control, restraint and correction as may be reasonably necessary to enable him to perform his duties as teacher and accomplish the purposes of education. And his power and duty extend beyond the teaching

and preservation of order and discipline to matters affecting the morals, health and safety of the students. See authorities cited in 79 C.J.S., Schools and School Districts, ¶ 493.

Government interest both national and state in requiring that the traditional tests of reasonableness be applied to searches and seizures is to be balanced against the compelling interest of the state in preserving the doctrine of in loco parentis in the school communities of the land; the public necessity and the fundamental social concept the doctrine represents antedating the Fourth Amendment demand its preservation. To reconcile these divergent interests and preserve the essential merits of each, in the narrowly defined area of the school community, a standard of reasonable suspicion rather than the traditional probable cause to justify a search is warranted by the "distinct relationship" between the high school official and the student. Other jurisdictions have approved such a rule. People v. Jackson, 65 Misc. 2d 909, 319 NYS 2d 731 (1971) and State of Delaware v. Baccino, 282 A. 2d 869, 49 ALR 3d 953 (1971). Cf. Mercer v. State, 450 S. W. 2d 715 (Tex. Civ. App. 1970) holding that since the principal was acting in loco parentis, he was not an arm of the government. See also 49 ALR 3d 980.

In applying these principles to the facts of this case, I am satisfied that the coach who made the initial intrusion into defendant's privacy by opening his valuables bag had a reasonable suspicion to believe that the valuables bag contained prohibited dangerous drugs.

Defendant's furtive gesture while nervously inserting his wallet in the valuables bag considered in connection with the coach's knowledge that defendant associated with drug users; the fact that "several cases of drugs being used" at the school were known to the coach; and the knowledge he undoubtedly acquired at the drug seminars invested the furtive gesture with such guilty significance that a rational suspicion existed. Thus the standard of probable cause for the search applicable to this case was satisfied. The furtive gesture has in other cases served to provide reasonable grounds for a search. People v. Orr, 26 Cal. App. 3d 849, 103 Cal. Rptr. 266 (1972); Gallik v. Superior Court of Santa Clara County, 97 Cal. Rptr. 693, 489 P. 2d 573 (1971); People v. One Chevrolet Impala, 33 Cal. Rptr. 64 (1963).

Not only is the search justified by this rational and reasonable suspicion, but the circumstances imposed upon the coach the duty to proceed as he did under his obligation in loco parentis, not only to correct the breach of discipline but to protect the student body as a whole from the unwholesome drug traffic threatening the school.

There is, moreover, an element of consent to this search which arises from the in loco parentis status and authority the parent delegates to teachers when he sends his children to school. No one would say the parent could not make such a search, and, logically, the parent consents that this authority is transferred to and vested in the teacher. For the teacher to fail to carry out the corresponding responsibility would itself amount to malfeasance. Also to be considered in justification of this search is the fact that defendant

surrendered possession of his wallet containing the marijuana to Scott the coach and with it the implied consent to inspect.

The search and seizure satisfied constitutional requirements.

II

The Confession

When defendant and his father arrived at the sheriff's office, they reported to Officer Keenze, the juvenile officer. Officer Keenze immediately advised defendant, in his father's presence, of his rights, reading to him the Miranda warnings. Questioning of defendant then commenced. He was giving a statement, when Officer Keenze heard Detective Graffeo enter the office next door. Realizing that defendant was seventeen years old and was to be accorded the same treatment adults receive in criminal matters, Officer Keenze requested that Detective Graffeo conduct the interrogation. Despite the fact that he was not to have the benefit of the law applicable to juveniles, defendant's father was permitted to remain with him during the interrogation that followed.

Detective Graffeo again advised defendant of his rights, and within ten or fifteen minutes he made a complete statement confessing to the possession and use of the marijuana and the source from which it was obtained. Thereafter the confession was reduced to writing by defendant in his own hand. The paper provided for the confession contained a printed acknowledgement that defendant had been advised of

his rights under the Fifth Amendment to the Constitution as to compulsory self-incrimination, his right to counsel and his right of trial, and that what he said could be used against him in a court of law, and that the statement was voluntarily made. The statement was witnessed by the two officers and defendant's father. I quote the pertinent content of the document for the bearing it has upon the free and voluntary character of the admission.

> "I have been using marijuana for one year. I started out with Keith Clements and I smoked several cigarettes with him and bought a few from him two weeks latter (sic) bought a cupple (sic) more from him and smoked them and I was caught with a ledd (sic) in willet (sic) at school in P.E. bag.
>
> "I gave Keith Clements $10.00 for two match boxes last week at school which had marijuna (sic) in it. 3/19/73.
>
> "The marijuna (sic) I was caught with was marijuna I bought from Keith Clements."

According to the police, the entire interrogation consumed 35-40 minutes. We learn from their testimony that defendant and his father are full-blooded Chitamacha Indians who live on a reservation near Charenton, Louisiana. The father has the equivalent of a fourth grade education. This background, it is asserted, makes defendant and his father easily susceptible to intimidation. Another factor improperly inducing the confession is said to result from the fact that the police assured them that if defendant

confessed, they would go easy on him, he would be brought before a lenient judge, his sentence would not exceed thirty days and they would see to it that defendant served his time as a trustee working in the prison kitchen. Furthermore, it is contended, defendant was intimidated by the father's threat to punish him if he didn't tell the police what they wanted to know.

On the other hand, Officers Keenze and Graffeo testified positively that they made no promises to defendant and the facts support their version of what occurred. Defendant and his father went to the sheriff's office on instructions from the principal; they did so freely and voluntarily, without having been arrested or taken into custody. After arrival at the sheriff's office, defendant promptly confessed, wrote out his confession, and signed a waiver of rights after the Miranda warnings were twice repeated by the officers. The confession and waiver document was signed by defendant and witnessed by both officers and defendant's father. At no time did the father or son protest the treatment they received nor did they demonstrate any attitude except one of cooperation with the officials.

On this issue, I am satisfied that the question this record presents is one of credibility of the witnesses. The version of the two state witnesses is supported by the physical evidence and the undisputed surrounding circumstances. Moreover, the trial judge who heard and saw the witnesses accepted the testimony of the police officers. Defendant's and his father's testimony differ only insofar as the promises they claim were made by the officers, otherwise the essential facts are not disputed.

The State has discharged its burden of affirmatively establishing the free and voluntary nature of the confession; it was, therefore, admissible in evidence. La. Const. art. I, ¶ 11; La. R.S. 15:451-52; Lego v. Twomey, 92 S. Ct. 619 (1972); State v. Cripps, 259 La. 403, 250 So. 2d 382 (1971); State v. Collins, 253 La. 149, 219 So. 2d 182 (1968); State v. Carter, 248 La. 730, 181 So. 2d 763 (1966); State v. Simpson, 247 La. 883, 175 So. 2d 255 (1965).

Society will not long tolerate the stringent and unrealistic rule of law imposed by the majority; a rule which will prohibit the control of drug traffic on the school grounds of the State.

I respectfully dissent.

No. 54,884

SUPREME COURT
OF THE STATE OF LOUISIANA

STATE OF LOUISIANA

VS.

WILLIAM AUGUST MORA, JR.

(ON REMAND FROM SUPREME COURT
OF THE UNITED STATES)

OPINION AND JUDGMENT

DENNIS, J.

Entered and Filed Mar. 29, 1976

/s/ HAROLD A. MOISE, JR.
Clerk.

REHEARING REFUSED
May 14, 1976

SUPREME COURT OF LOUISIANA
A TRUE COPY
JUL. 28, 1976
/s/ ANDREW J. FALCON
Deputy Clerk

(SEAL)

SUPREME COURT OF LOUISIANA

NO. 54,884

STATE OF LOUISIANA

VERSUS

WILLIAM AUGUST MORA, JR.

On Remand from the Supreme Court of the United States

DENNIS, Justice.

William August Mora, Jr. was charged by bill of information with possession of marijuana in violation of La. R.S. 40:966(C). He was found guilty as charged and subsequently sentenced to six months' imprisonment. We granted defendant's application for certiorari, 295 So.2d 808 (La. 1974), and reversed the conviction and sentence, finding merit in defendant's contention that the trial judge committed error in denying his motion to suppress the marijuana. 307 So.2d 317 (La. 1975). The Supreme Court of the United States granted the petition of the state for certiorari and thereupon vacated our judgment and remanded the case to this Court, issuing the following mandate:

> ON CONSIDERATION WHEREOF, it was ordered and adjudged on October 6, 1975, by this Court that the judgment of the Supreme Court of Louisiana in this cause be vacated, and that this cause be remanded to the Supreme Court of the State of Louisiana to consider whether its judgment is based upon federal or state constitutional grounds, or both. See California v. Krivda, 409 U.S. 33 (1972).
>
> NOW, THEREFORE, THE CAUSE IS REMANDED to you in order that such proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and laws of the United States, the said writ notwithstanding.

Pursuant to the mandate set forth above, we have considered whether our opinion in this cause was based on federal or state constitutional grounds, or both, and certify as follows:

Our opinion reflects that we followed three steps in concluding that the trial court erred in failing to suppress the marijuana seized from the defendant. First, we determined that the instructor and the school principal who effected the search and seizure were functioning as governmental agents. This decision was reached solely by an analysis of Louisiana law. La. R.S. 17:416. Next we decided that the warrantless search of defendant's duffel bag was unreasonable and in violation of both federal and state constitutional prohibitions against unreasonable searches and seizures. Fourth Amendment of the United States Constitution; Article I, §7 of the Louisiana Constitution of 1921. Consequently, we concluded that suppression of the seized marijuana was mandated under the exclusionary rule of Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

Thus, we acted on both federal and state constitutional grounds, as well as state statutory law, in reaching our decision in this case.

SANDERS, C. J., dissents with written reasons.

SUMMERS, J., dissents for the reasons assigned.

DIXON, J. concurs, but would note that the exclusionary rule, at the time of the search, was embodied in C. Cr. P. 703, and is now contained in Art. 1, §5, La. Const. 1974.

MARCUS, J., dissents and assigns reasons.

SUPREME COURT OF LOUISIANA

NO. 54,884

STATE OF LOUISIANA

V.

WILLIAM AUGUST MORA, JR.

SANDERS, Chief Justice (dissenting).

On January 20, 1975, a divided Court reversed defendant's conviction of possession of marijuana, holding that public school principals and instructors are bound by the search warrant requirements of the Fourth Amendment to the United States Constitution. La., 307 So.2d 317 (1975). The majority stated:

> "... Because of the function of these school officials and their strict accountability to the State, we must conclude that these school officials, insofar as they are discharging their duties by enforcing State policies and regulations, are within the purview of the Fourth Amendment's prohibition; therefore, their students must be accorded their constitutional right to be free from warrantless searches and seizures."

The United States Supreme Court vacated the judgment and remanded the case to this Court for us to consider whether the judgment is based upon federal or state grounds or both.

The majority has concluded that "we acted on both federal and state constitutional grounds, as well as state statutory law." In so announcing, the majority has placed an unwarranted barrier in the path of appellate review by the United States Supreme Court.

The constitutional question is whether school teachers must secure warrants to search for weapons, narcotics, and other prohibited items in gym lockers, desks, or in a student's possession in school buildings.

I had the definite opinion when the decision was handed down that the majority held that such a search did not fall within the "specifically established and well-delineated exceptions" to the warrant requirement of the Fourth Amendment. My opinion in this regard is fortified by the citation of Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971) as authority for the holding.

The only Louisiana case cited at any point in the decision is State v. Tant, La., 287 So.2d 458 (1973). That decision, however, dealt solely with the Fourth Amendment to the United States Constitution.

The analysis of our state school statute, LSA-R.S. 17:416, was directed to the general status of teachers. The statute, itself, does not deal with search and seizure. Hence, the statutory analysis is collateral and cannot serve as an adequate stage ground for resolution of the overriding constitutional issue.

Hence, I conclude that the Court acted under what was conceived to be the compulsion of the Fourth Amendment to the United States Constitution as interpreted by the Supreme Court of the United States. See Department of Mental Hygiene of California v. Kirchner, 380 U.S. 194, 85 S.Ct. 871, 13 L.Ed.2d 753 (1965). This conclusion, of course, makes the decision reviewable by the United States Supreme Court.

If there is any doubt about the interpretation of the decision, however, it should be resolved in favor of reviewability. Here, the majority has fastened upon the school officials of our state an onerous search warrant requirement at a time when violence and lawlessness in some of our schools are acute.

The great weight of authority is contrary to the decision. See State v. Baccino, Del., 282 A.2d 869 (1971); In Re Donaldson, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969); Mercer v. State, 450 S.W.2d 715 (1970); People v. Overton, 20 N.Y.2d 360, 229 N.E.2d 596 (1967); State v. Stein, 203 Kan. 638, 456 P.2d 1, cert. denied 397 U.S. 947

(1969); People v. Jackson, 65 Misc.2d 909, 319 N.Y.S.2d 731 (1971); In Re State in the Interest of G.C., 121 N.J. Super. 108, 296 A.2d 102 (1972); In Re C., 26 Cal. App. 3d 320, 102 Cal. Rptr. 682 (1972).

The Louisiana Teachers' Association, in my opinion, correctly maintains:

> ". . . [I]t is indeed unfortunate that Louisiana, by this Honorable Court's decision, has not only aligned itself with a minority of states in this area, but has established far more stringent requirements for school officials in discharging their obligations to protect the interest of all of the students than any other State."

For the reasons assigned, I respectfully dissent.

SUPREME COURT OF LOUISIANA

NO. 54,884

STATE OF LOUISIANA

VS.

WILLIAM AUGUST MORA, JR.

SUMMERS, Justice (dissenting).

In my view this Court's opinion (307 So. 2d 317) is based upon the all-pervading influence of decisions of the United States Supreme Court interpreting the Fourth Amendment of the United States Constitution, as made obligatory on the States by the Fourteenth Amendment. These citations relied upon in the majority opinion make this fact evident: Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Coolidge v. New Hampshire, 403 U.S. 443 (1971); Katz v. United States, 389 U.S. 347 (1967); Mapp v. Ohio, 367 U.S. 643 (1961); Burdeau v. McDowell, 256 U.S. 465 (1921).

The sole Louisiana case referred to in the majority opinion, State v. Tant, 287 So. 2d 458 (La. 1974), is one based almost entirely upon the authority of decisions of the United States Supreme Court. This can hardly be considered sufficient to classify this decision as one based upon a state constitutional ground.

Until Mapp v. Ohio, Louisiana's Constitution had never been interpreted to require the exclusion of evidence obtained as a result of a violation of the search and seizure standards of Article I, Section 7, of that constitution.[1] State v. Martinez, 220 La. 899, 57 So.2d 888 (1952), *cert. denied*, 344 U.S. 843 (1952); State v. Long, 161 La. 250, 108 So. 471 (1926), *error dismissed*, 273 U.S. 653 (1927); State v. Eddins, 161 La. 240, 108 So. 468 (1926); State v. Fleckinger, 152 La. 337, 93 So. 115

1 La. Const. art. I, §7 (1921) provides:
"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no such search or seizure shall be made except upon warrant therefor issued upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

(1922). So far as I can ascertain, all of our decisions invoking the exclusionary rule has been based upon the compulsion of Mapp v. Ohio.

The determination that the school instructor and school principal were functioning as state agents was a necessary element of any decision applying standards established by decisions of the United States Supreme Court which require that state officials or agents be involved before the Fourth Amendment's proscriptions can be made obligatory upon the states by the Fourteenth Amendment. The opinion resolution of this fact, therefore, does not, standing alone, demonstrate that the decision is grounded to any extent upon the state constitution. To the contrary, this approach to the problem more properly indicates the majority's effort to establish state participation in order that the federal constitutional standards could be made applicable.

On the facts of this case no decision was intellectually feasible in total disregard of the principles of the Fourth, Fifth and Fourteenth Amendments and the decision in Mapp v. Ohio, 367 U.S. 643 (1961). This Court could not find that the Fourth Amendment was not violated but that Article I, Section 7, of the Louisiana Constitution was violated and then invoke an exclusionary rule without overruling the long line of Louisiana decisions holding that the evidence obtained as a result of a violation of Article I, Section 7, was nevertheless admissible. By invoking the exclusionary rule of Mapp v. Ohio the majority necessarily grounded its decision upon a violation of the Fourth Amendment, for there was no state constitutional or decisional authority which standing alone would support the exclusion of the evidence.

Aside from State v. Baccino, 282 A. 2d 869 (Del. Super. 1971), the defense brief relied entirely upon decisions of the United States Supreme Court interpreting the Fourth, Fifth and Fourteenth Amendments, implying that the same interpretation should be placed upon like state constitutional provisions because of their similarity. See Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969); Bumper v. North Carolina, 391 U.S. 543 (1968); West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). It is pertinent to observe also that State v. Baccino, supra, was decided by the Superior Court of Delaware upon the authority of the Fourth Amendment as interpreted by the United States Supreme Court and other courts applying those interpretations.

While purporting to decide this case upon standards established by the United States Supreme Court, the majority has misunderstood and misapplied those standards. The decision fails to recognize the all-important doctrine that school environment presents "special characteristics" which must determine the light in which constitutional principles are applied. Tinker v. Des Moines Independent Community School District, *supra*.

By declaring now that the decision is based in part upon state grounds, the majority seeks to shield this decision from the review to which it should rightfully be subjected by the Highest Court. Founded, as the decision purports to be, upon pronouncements of the United States Supreme Court interpreting federal constitutional principles obligatory on the states, its impact will be far-reaching, not only upon the schools of

Louisiana, but upon all the schools of America, if review is denied by our Nation's Highest Court.

It should be noted, moreover, that the author of the original opinion in this matter no longer sits on the Court, and the author of this remand opinion did not participate in the application for writs, the hearing, the rendition of the opinion, the application for rehearing or the decision denying a rehearing in this case. When the views of the author of this remand opinion are not considered, this Court is evenly divided on the case.

I am of the opinion that the original majority opinion was based upon federal constitutional grounds.

I respectfully dissent.

SUPREME COURT OF LOUISIANA

NO. 54,884

STATE OF LOUISIANA

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WILLIAM AUGUST MORA, JR.

MARCUS, Justice (dissenting)

Although the previous opinion of this court[1] contains a reference to art. 1, §7 of the 1921 Constitution of

1 The author of this dissent also dissented from the previous judgment of this court. 307 So. 2d 317 (La. 1975).

the State of Louisiana,[2] the language of which is similar to the fourth amendment to the United States Constitution, I am unable to conclude, after analyzing the opinion in its entirety, that the judgment rested on an adequate, independent, nonfederal ground. In holding that the search of defendant's wallet by the school official was unlawful, this court relied, in my view, on the decisions of the United States Supreme Court interpreting the fourth amendment to the United States Constitution. These decisions declare that a search conducted without a warrant is *per se* unconstitutional unless it falls within one of the "specifically established and well-delineated exceptions" to the warrant requirement of the fourth amendment. Coolidge v. New Hampshire, 403 U.S. 443 (1971) (cited and quoted in our previous opinion). This court found that the warrantless search in this case did not come within one of these exceptions, and stated:

> We hold that a search on school grounds of a student's personal effects by a school official who suspects the presence or possession of some unlawful substance is not a 'specifically established and well-delineated' exception to the warrant requirement and that the fruits of such a search may not be used by the State prosecutorial agency as the basis for criminal proceedings.

Therefore, in my opinion, this court acted either solely on federal, constitutional grounds; or, in con-

2 The 1921 constitution was in effect at the time of the trial of this case.

struing our state constitution, acted under what this court conceived to be the compulsion of the fourth amendment to the United States Constitution, as interpreted by its ultimate arbiter, the Supreme Court of the United States. Department of Mental Hygiene of California v. Kirchner, 380 U.S. 194 (1965). Accordingly, I respectfully dissent.